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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

YUM MATSUBA et al.,

Petitioners,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

AMIR ZIPORI,

Real Party in Interest.

B237625

(Los Angeles County  
Super. Ct. No. LC084222)

ORIGINAL PROCEEDINGS in mandate. Huey Cotton, Judge. Petition granted.

Ronald D. Tym for Petitioners.

No appearance for Respondent.

No appearance for Real Party in Interest.

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Petitioners and defendants Yum Matsuba, Owner Management Service, LLC, and Trust Holding Service Co. (petitioners) seek mandate to vacate respondent court's order of December 9, 2011, granting real party and plaintiff Amir Zipori's motion objecting to the sufficiency of undertaking for appeal by personal sureties, and requiring petitioners to file an undertaking by an admitted surety insurer in an amount equal to twice the judgment of \$59,368.72, or \$118,737.44. Petitioners contend that under Code of Civil Procedure<sup>1</sup> section 995.010 et seq., the subject undertaking of the personal sureties submitted below was sufficient, and that respondent court's requirement that they file an undertaking by an admitted surety in the amount of twice the judgment is contrary to and in excess of the amount required by section 917.1, subdivision (b).

We hold that respondent court's determination that the undertaking by the personal sureties was not sufficient under sections 995.510, 995.930 and 995.960, and requirement that an undertaking be provided by an admitted surety insurer, was not contrary to law or an abuse of discretion. However, that part of the court's order requiring an undertaking by an admitted surety insurer in the amount of twice the judgment was in excess of the amount of one and one-half times the judgment required by section 917.1, subdivision (b). Accordingly, we issue mandate requiring respondent court to modify its order to require petitioners to file a bond in the amount of one and one-half times the judgment of \$59,368.72, or \$89,053.08, and to vacate that part of the order requiring an undertaking of twice the judgment.

#### PROCEDURAL HISTORY

On September 29, 2011, after a bench trial, the court found in favor of Zipori in his lawsuit for breach of a lease. A judgment of \$59,368.72, including fees and costs, was entered against petitioners on October 31, 2011.

On November 23, 2011, petitioners filed a personal surety bond of \$118,737.44 pursuant to sections 995.010 et seq. and 917.1, to stay enforcement of the judgment

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<sup>1</sup> All further statutory references are to this code unless otherwise indicated.

pending appeal. The bond was supported by the affidavits from Ryu Goeku and Jamie Matsuba, who asserted that they were the beneficiaries of a trust which owned real property at 8409 Brimfield Avenue, Panorama City, California (the real property) which had a fair market value of \$392,000, liens of \$75,000 and a net value of \$317,000. The sureties claimed to be worth at least the amount of the bond (\$118,737) in real or personal property, over all debts and liabilities, exclusive of property exempt from enforcement, by virtue of being fifty percent beneficiaries of the trust that is the fee owner of the real property.

On December 6, 2011, real party filed a motion objecting to the sufficiency of the undertaking pursuant to section 995.930 and a request for judicial notice. The motion challenged the sufficiency of the undertaking because, among other things, the fair market value (FMV) of the property was exaggerated and consequently failed to adequately protect the real party's interests. The FMV claimed for the real property by the sureties was \$392,000, while the FMV estimated by plaintiff based on its purchase price in September 2010 was \$210,000. Real party maintained that the sureties' assertion of a FMV of \$392,000 was inherently improbable, as it represented a near doubling in value over a one-year period, during a time of decline in the real estate market.

On December 9, 2011, the trial court ruled that the personal surety bond was insufficient under section 995.510, subdivision (a)(3) because, inter alia, the fair market value of the home listed as collateral for the bonds bore no relation to the price of \$210,000 at which the home sold in September 2010. The court issued the following order: "The court, having determined that the undertaking is insufficient in the amount of \$118,737.44, hereby orders defendant Matsuba to file a bond in the amount of said deficiency, issued by an admitted surety insurer within 5 days."

Petitioners filed this petition for writ of mandate, contending that they are entitled to rely on personal sureties under sections 995.010 et seq. as well as admitted surety insurers, and that section 917.1, subdivision (b) requires only one and one-half times the judgment where an undertaking is filed by an admitted surety insurer, rather than twice the judgment as is required for personal sureties.

On March 7, 2012, this court issued an alternative writ of mandate directing respondent court, after conferring with the parties and considering sections 995.010, 995.510, 995.930, 995.960, and 917.1, subdivision (b), to modify its order of December 9, 2011, granting the motion by real party Zipori objecting to the sufficiency of bond on appeal. Respondent court was instructed to affirm that part of the order determining that the undertaking by petitioners is insufficient, and ordering petitioners to file a bond by an admitted surety insurer. Respondent court was to modify the remainder of its order to require petitioners to file a bond in the amount of one and one-half times the judgment, or in the alternative to show cause before this court on April 2, 2012. Real party was allowed to file a return to the petition by March 19, 2012, and petitioner to file a reply to the return by March 26, 2012. Respondent court failed to comply with this court's alternative writ of mandate or to show cause, and neither real party nor petitioner filed a return or reply to the alternative writ.

## DISCUSSION

Section 995.510 provides that a personal surety on a bond is sufficient if three conditions are satisfied, including that the surety is worth the amount of the bond in real or personal property, or both, over and above all debts and liabilities, exclusive of property exempt from enforcement of a money judgment. Section 995.930 provides that an objection to a bond or undertaking shall specify the grounds including the reason for the insufficiency of the amount of the bond and an estimate of the amount which would be sufficient. Section 995.960 provides that the court shall make an order determining the sufficiency or insufficiency of the bond, and shall specify in what respect the bond is insufficient and shall order a bond with sufficient sureties and in a sufficient amount be given within 5 days. If a sufficient bond is not given within the time required by the order, all rights by giving the bond immediately cease.

Respondent court's decision of December 9, 2011, determining that the undertaking in the amount of \$118,737.44 is insufficient is not an abuse of discretion. Respondent court's determination is supported by substantial evidence including its

findings that the personal sureties were insufficient as to the amount of wealth under section 995.510, subdivision (a)(3), and the fair market value of the real property was overstated. Respondent court's order that petitioners file a bond issued by an admitted surety insurer within 5 days is supported by substantial evidence.

However, the amount of the bond ordered by respondent court to be filed by an admitted surety insurer – \$118,737.44 – is twice the amount of the \$59,368.72 judgment. Section 917.1, subdivision (b) provides that ". . . The undertaking shall be for double the amount of the judgment or order unless given by an admitted surety insurer in which event it shall be for one and one-half times the amount of the judgment or order. . . ." Because the bond must be filed by an admitted surety insurer, the amount of the undertaking shall be for one and one-half times the amount of the judgment, or \$89,053.08, rather than \$118,737.44.

#### DISPOSITON

Accordingly, the petition is denied except to the extent that respondent court is directed to modify its order of December 9, 2011, as to which the requested peremptory writ of mandate hereby issues. Respondent court is directed to affirm that part of its order granting the motion by real party Zipori objecting to the sufficiency of bond on appeal, and determining that the undertaking by petitioners is insufficient and ordering petitioners to file a bond by an admitted surety insurer. Respondent court is directed to modify the remainder of the order to require petitioners to file a bond in the amount of one and one-half times the judgment of \$59,368.72, or \$89,053.08, and to vacate that portion of the order requiring a bond in the amount of twice the judgment. Each party is to bear its own costs.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.